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“Getting It Right”: The Birth of a New EU Common Fishery Policy?—Legislative and Legal Perspectives on the Annulling of the “Five Structural Failings”[†]

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Abstract

This *lex ferenda* article examines EU efforts to change the criticized and now-repealed 2002 “top-down” management regulation with its discard system, vessel decommissioning, fishing effort management, and quota allocations. The 2013 regulation’s objective is to remedy the Common Fisheries Policy’s “five structural failings.” Unfortunately, the new regulations have failed to improve the situation. Political obstruction, lax enforcement, transitional costs, and the weight of the *status quo* hamper future amendments.

Keywords: *EU Common Fisheries Policy; subsidization; vessel overcapacity; discard; micromanagement; five structural failings; inappropriate instruments; responsive fisheries*

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1. The topic—introduction, working hypothesis, and overview

There are no clear indicators and yardsticks that could provide more concrete guidance or to help measure policy achievements.¹

This article² examines new reforms designed to remedy the much-discussed “structural failings” of the EU Common Fisheries Policy (CFP).³ These failings are fleet overcapacity, imprecise policy objectives resulting in insufficient guidance for implementation, decision-making that encourages a short-term focus, a framework that does not give sufficient responsibility to the industry, and thus poor compliance.⁴

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The question under scrutiny is whether a reform of the CFP will overcome the shortcomings identified by the green paper. Has the EU fisheries policy improved, or is it upholding the *status quo*? Is this a momentous leap into the next generation of bylaws or is it a pipe dream?⁵

The CFP “improvements” is an optimistic path to follow. The 2013 management regulation (M-reg)⁶ cannot reconstitute the structural failings. Comparative studies on the 2002⁷ and 2013⁸ legislation and 2001 (“Roadmap”)⁹ and 2009¹⁰ green papers disclose the inability to devote sufficient political capital to obtain the necessary radical changes.

As discussed in this article, “transactional costs”¹¹ or “the cement of society”¹² are strong “contraceptives,” serving to maintain the *status quo*. I subscribe to the position that the marginal amendments in the 2013 legislation have been unable to prevent political obstruction or promote enforcement, impairing the very best of intentions.

2. A platform: CFP shortcomings

It looks as if the CFP and its problems will be with us for some time to come.¹³

This section exposes the downsides of the CFP, its so-called shortcomings. It scrutinizes the EU’s own evaluation of these shortcomings, as well as positions taken by social scientists.

2.1. The shortcomings, legal entitlements, and imperfections—an overview

EU consensus indicates that the CFP has not lived up to expectations on a number of fronts.¹⁴ There are several shortcomings or structural failings in the policy,¹⁵ a continuing “structural overcapacity” and a goal of ending the mess (M-reg Article 22.2; annual capacity assessment report). What makes the EU subscribe to the 2013 solution as better equipped to reversing failures than earlier provisions?

The commission identifies the failings of the CFP as follows:

- A deep-rooted problem of fleet overcapacity
- Imprecise policy objectives resulting in lacking guidance for decision/implementation
- A decision-making system that encourages a short-term focus
- A framework that does not give sufficient responsibility to the industry
- Lack of political will to ensure compliance and poor compliance by the industry¹⁶

Sections 2.2–2.7 present these failures in due turn.

Ms. Damanaki has called for support from member states (MS) and members of the EU Parliament.¹⁷ The objectives presented in 2013 M-reg Article 1 enshrine her good intentions.¹⁸ Under its common policies, the EU enjoys exclusive jurisdiction within the bounds of the Treaty on the Functioning of the European Union (TFEU) Article 3.1(d), “the conservation of marine biological resources under the CFP,”

which ends MS legislative power. MS conservation competencies are limited to delegated matters. Beyond areas of conservation, the EU and MS share competencies. Nonregulated areas or loopholes neglected by the EU have left the arena open for MS jurisprudence. The EU law's preemptive force (TFEU Article 3.1) has resulted in a coherent conservation policy.

The 2013 M-reg failed to change core elements of the CFP. The total allowable catch (TAC) and quota allocations based on relative stability remain cornerstones of the CFP's conservation policy. The equal access principle also remains in force. In addition, seemingly rational behavior on the part of individuals has resulted in irrational solutions. Moreover, it has reinstated the prolongation of a 10-year transitional period to end in 2012, which has now been extended for the fourth time to 2022.

2.2. The ecological viability of the CFP—"imprecise policy objectives"

None-the less, 10 years after the WSSD [World Summit on Sustainable Development], most stocks in European waters (88%) are still considered to be overfished and 30% of them are estimated to be outside safe biological limits, which means that they may not be able to replenish. Thus, up to 2010, Europe is still far from achieving the objectives agreed at the WSSD in 2002. In this perspective, the Common Fisheries Policy (CFP) has been considered ineffective in terms of reducing fishing capacity as well as in rebuilding marine ecosystems.¹⁹

This section focuses on how the 2013 CFP addresses the EU's vague environmental goals. An ideal option is to apply the ecosystem approach to fisheries management, a goal stated in the preamble of the M-reg (Paragraph 13): "An ecosystem-based approach to fisheries management needs to be implemented, environmental impacts of fishing activities should be limited and unwanted catches should be avoided and reduced as far as possible." Allegedly, this project will (2018) introduce a multi-species approach and develop indicators of good environmental status.²⁰ Perhaps this will prove to be a lasting solution.

The main problem is a lack of environmental sustainability, due mainly to fleet overcapacity and excessive fishing pressure, resulting in the overexploitation of a large number of stocks. A vital component here is the "unaccounted excess fish mortality [that] undermines the effectiveness of the TAC system and the credibility of the CFP's sustainability goal from the perspective of fishermen."²¹

To provide information on the misbalance between fishing capacity and fishing opportunities, each MS shall submit a yearly report to the commission (M-reg Articles 22.2 and 4). EU subsidization is one main reason for this requirement (see Section 4.2).

Other factors that contribute to a lack of environmental sustainability are discard rules (2013 M-reg preamble, Paragraphs 26, 27, 32; Article 2.5[a], etc.), noncompliance with the CFP, financial assistance (2013 M-reg preamble, Paragraph 64), insufficient enforcement (preamble, Paragraphs 59–61), relative stability²² (preamble, Paragraph 35, and Article 16), and top-down management.

The present system has prolonged the intermediate CFP solutions of the 1970s and 1980s. During four transitional periods and reviews, political ambitions were high, but the CFP endeavored to manage fisheries towards its own objective of sustainable exploitation.²³

The allocation system of “relative stability” is still in force. As envisaged in the M-reg, it remains one of the CFP’s fundamental elements (preamble, Paragraphs 35–37, and Article 16).

Goals related to the lengthy debate on discards and bycatch problems seem, at least formally, to have arrived at a more innovative stage. In reforming the CFP, the commission has declared that its purpose is to eliminate discards²⁴ and that a “future CFP should ensure that discarding no longer takes place”²⁵ while concurrently solving the problem of how a commitment to “maximum sustainable yield (MSY) can be implemented in mixed fisheries while avoiding discards.”²⁶ Together, “measures should be taken to further eliminate discards in EU fisheries” hereunder to construe a new CFP that could fit into “management through transferable quotas.”²⁷

While the EU is committed to eliminating discard practices, the instruments are chaotic. A balanced use of new models may potentially pave the way out of this biological mess. I am, however, doubtful since the M-reg downplays conclusive expressions of the draft provisions (Section 3.3).

Clearly, a ban on discards cannot operate in isolation. The regulation of fisheries works in concert with other technical means, such as new rules on bycatches. However, pessimism is strong—also among social scientists: “The Green Paper vision of fish stocks being restored to biomasses that can deliver MSYs by 2020—well after the previously agreed deadline of 2015—is thus highly unlikely.”²⁸ This position is, however, disputed: “the analysis demonstrates that the process is clearly underway, both from a biological and economic perspective. Therefore the sweeping statement that all European fish stocks and fisheries are in a dire state is not supported by recent data.”²⁹ Moreover, EU official optimism is high regarding further developments:

But there is good news elsewhere [than in the Mediterranean], as in the Northeast Atlantic area, and that includes the Baltic and North Seas, overfishing has fallen from 86% (30 stocks overfished out of 35 assessed) in 2009 to 41% (19 out of 46 stocks) in 2014.³⁰

This article cannot pinpoint a single explanation for these latest developments in stocks. Some analysts seem to subscribe to the idea that the positive trend commenced with the introduction of multiannual management plans.³¹ My impression, however, is that since the Northeast Atlantic includes areas and species beyond EU waters and responsibilities, these statistics are inaccurate. Looking at the situation in the North Sea in isolation, the prospects are less positive. Out of 18 stocks, 9 are not fishable at all. Of the remaining species, all nine were heavily reduced between 1997 and 2009, with the exception of tusk.³² Moreover, regarding areas where the EU has sole responsibility, for example the Celtic Sea (the International Council of the Exploration of the Seas [ICES] Subareas VI and VII), landings of deep-water species in 1999–2011 dropped from 90,000 tonnes to 20,000 tonnes in 2011.³³

2.3. The CFP socioeconomic viability—“a deep-rooted problem of fleet overcapacity”

The commission identifies fleet overcapacity as a fundamental CFP problem, leading to low economic performance, weak enforcement, and overexploited resources.³⁴ The 2013 reform intended to counter these problems. The modernization of rural societies has been half-hearted:

The key principles of this model were economies of scale and concentration, forces which have certainly transformed fisheries. The focus of development was upon intensification, modernisation and specialisation within sectors, but also the encouragement of labour and capital mobility. It included inducements to farmers and fishers to leave their industries.³⁵

This requires, however, alternative work. Unfortunately, these efforts have failed, and political pressure has forced through subsidization schemes to benefit the community's fishing industries. The European Fisheries Fund (EFF),³⁶ which had a budget of €4304 million for the period 2007–2013, has been an answer to the difficult unemployment situation in MS.

[T]he aim of axis 4 [Priority alliance for the sustainable development of fisheries areas] is not just to tackle the short term effects of the CFP and of the economic, social and environmental impacts of the depletion of fish stocks. Its purpose is to help fishing communities and areas to create new sustainable sources of income and quality living. It does this by providing people who most understand both the problems and the dreams of fishing communities—with the tools for adapting the solutions to their real needs.³⁷

Despite conservation and economic downsides, EFF has allocated pecuniary resources for years, a social system that has boosted life into the many fishing villages and harbors all over the EU. Presumably, this scheme will continue in the CFP intermediate period until 2022.

Poor economic results are closely related to CFP social problems. While some vessels, like the purse seiners, do fairly well, with few exceptions³⁸ most EU fleets are barely profitable and dependent upon public financial support:

France's largest deep-sea fishing fleet is being artificially propped up by millions in state subsidies and cash injections from its owners, said a French NGO. Scapeche, part of the Intermarche group, has accumulated losses of €19 million before tax since 2002—and this in spite of €10m in state subsidies and €20m in cash injections from Intermarche, said the environmental association Bloom.³⁹

Another case is the situation of one of the world's largest fishing companies, Pescanova of Spain: The regional government of Galicia offered the company a bailout loan of €55 million.⁴⁰ The actual situation of the company is likely to be worse than this number suggests. The debt of Pescanova's branch companies and myriad of subsidiaries has piled up and disguised much higher losses.⁴¹ State aid is one of the basic hindrances to reaching the sustainable fisheries of tomorrow: “The problem of excess entry and overcapacities is further exacerbated by the payment of

subsidies to fishermen tending to support their domestic fishing industry as has been done intensively by both the European Commission and Member States.”⁴² The problem of state aid relates to the fundamental problem of lack of environmental sustainability (Section 2.2), with overcapacity causing overfishing, low stock levels, poor catches, and low profits. A full account of the negative effects of subsidization is not part of the scope of this article.⁴³ EU policy, however, has changed lately.

Even though landings are not subsidised in a direct way any longer, direct and indirect subsidies have been paid on inputs, such as tax exemptions for fuel or for modernisation of fishery fleets. Such subsidies either induce further market entry, or at least maintain the fleet capacity at an excessively high level. Since 2005, the European Union (EU) has focused on more subsidies for vessel decommissioning combined with strict limitations on new entry of capacities. Despite this policy, overcapacity and overfishing remain the key problems of the CFP.⁴⁴

This is the EU position; see the 2003 regulation on fishing effort⁴⁵ and the principle of M-reg Article 22.2 that compulsory reporting shall seek to “identify structural overcapacity by segment and shall estimate the long-term profitability by segment.” MS should prepare “an action plan for the fleet segments with identified structural overcapacity” (Article 22.4). Thus, the lack of social viability, which affects fishing villages and the catching sector, is still a major problem that links to environmental and economic problems. Social scientists conclude as follows:

It is hard to deny that EU fisheries policy has failed communities socially. Social objectives have either been left to MS to elaborate or handled as an externality of fisheries policy, to be dealt with through local development and cohesion strategy.⁴⁶

2.4. Decision-making failure that “encourages a short-term focus”

Reforming the European fisheries policy also means changing the decision-making process and making it more effective. At present, even the most detailed technical decisions—such as the mesh size fishermen can use for catching sole off the coast of Dover—are jointly taken at the European Parliament and the Council of Ministers, the highest political level in the European machinery.—Maria Damanaki⁴⁷

According to the EU’s perception, decision-making encourages a short-term focus. A complex, top-down micromanagement system⁴⁸ generates poor and often ineffective implementation of fisheries regulations. Lack of means-ends analyses combined with low law-abidingness also creates difficulties. In addition, the short-term focus makes the rather broad CFP objectives, especially those of environmental sustainability, difficult to achieve. The heavy burden of detailed prescriptive rules is too overwhelming to follow. Perhaps this fact will provide the EU with the impetus to change the system to a “bottom-up” decision-making system.

Overexploitation results from the fact that “compared to the recommendations made by ICES, and even to those made by the European Commission, the Council of fisheries ministers has continuously set TACs much higher, presumably due to short-term political considerations.”⁴⁹ Presumably, “paper quotas” above ICES

recommendations have compensated for the lack of “real fish.”⁵⁰ Allocating nonexistent fish has been the path of least resistance.

Looking overseas, the poor record of EU fishing of non-EU stocks within the framework of international fishing agreements is attributed in part to the “pay, fish, and go” policy,⁵¹ which has resulted in overexploitation (e.g. off West Africa) and dire consequences for local fishermen and fishing communities.⁵² Over the last two to three decades a “second generation of agreements” has been underway.⁵³ However, it is still not clear how these two generations of agreements will vary, because the payment condition is still one of the basic sticking points.⁵⁴ The new name, Fisheries Partnership Agreement (FPA), has not changed much.⁵⁵ As part of its payments to developing countries, EU grants have improved access to the “inner market.” However, opportunities to take advantage of preferential custom duties are poor:

The cost of equipment needed to comply with SPS [WTO Sanitary and Phytosanitary Agreement] standards and meet product traceability requirements is particularly burdensome for small-scale ACP [African, Caribbean, and Pacific] processors and artisanal fishers. Appropriate European aid must be granted as soon as possible to meet these challenges. Regional integration measures should improve hygiene and traceability standards so that ACP populations benefit first from improved supplies delivered by hygiene and traceability improvements.⁵⁶

2.5. A framework that does not give “sufficient responsibility to the industry”

This section examines current quota-setting procedures and whether the EU’s new legal approach to stakeholder participation is an apt response to the long-term criticism. This article, however, refrains from analyzing whether a makeover from micromanagement to bottom-up decision-making is the ultimate salvation.⁵⁷

The principal EU conservation management tools are TAC and MS fisheries quotas.⁵⁸ In order to understand the process behind TAC-setting and its CFP impact, it is necessary to review its legal basis and the definition of terms used to describe its functioning.

The EU defines *TAC* as quantitative limits on landings, usually expressed in tonnes that are set at the level of stocks or group of stocks.⁵⁹ These are defined by the M-reg as a living aquatic resource that occurs in a given management area.⁶⁰ The regulation entitles affected states to make joint recommendations to the commission, which subsequently may limit fishing activities by limiting catches.⁶¹ MS are entitled to determine quotas on a nondiscriminatory basis “in their 12 nautical mile zone.”⁶² The regulation does not use the term *TAC* but the substitute term *limiting catches*, which is defined as “catch limits,” meaning “a quantitative limit on landings of a stock or group of stocks over a given period.”⁶³ Marine resources have suffered tremendously from the fact that catch limits are based on quantitative limits on landings rather than catches.⁶⁴ This is still the same today (2015): “Landing obligation . . . All catches of species which are subject to catch limits . . .”⁶⁵

Article 4 (21) defines *fishing effort* as “the product of the capacity and the activity of a fishing vessel; for a group of fishing vessels it is the sum of the fishing effort of all vessels in the group.” Thus, fishing opportunity is expressed either in terms of catches or fishing effort or collectively, and it indicates a quantified legal entitlement

to fish but is not a guarantee of a certain catch of fish.⁶⁶ These principles comprise the framework for the council's decisions on the TAC after the commission's proposal.⁶⁷

There are four stages in the quota-setting procedure: The first involves scientific advice from ICES to the commission.⁶⁸ The second stage includes a provision of advice from the Scientific, Technical and Economic Committee for Fisheries (STECF) to the commission. In the third phase, the commission proposes a regulation to the council based on the recommendation received from STECF and ICES. The last stage involves the adoption of a regulation by the council and the EU Parliament, setting TACs for commercially important stocks.⁶⁹ The M-reg provides the legal framework for the Regional Advisory Council (RAC) (see the preamble, Paragraphs 65–67, Articles 3(f), 6.2, 12.2, 13.2, 14.1, 18.2, 20.2, 27.2, Part XI, and Annex III, which address the relationship between the RAC and the commission).⁷⁰ In its 2008 review of the functioning of the RAC, the commission disclosed that the criterion used is “whether that [the RAC's] advice is compatible with CFP objectives and sustainable fisheries.” The review provides no data on whether the commission may ignore the RAC's advice but states its clear relevance.⁷¹ Sustainable fisheries are dependent in part on access to maritime space and to healthy marine ecosystems.

The German position on the achievements under the 2002 M-reg is summarized accordingly:

Although the introduction of the ecosystem approach to fishery management was specified as a main target in the reformed CFP in 2002 (Council regulation No. 2371/2002), the implementation has left much to be desired.⁷²

What are the expectations regarding improved outcomes in the new transitional period (2014–2022)? Clearly futile implementation will play a role, as will lack of enforcement.⁷³ Interwoven factors obscure our insight into which factor or factors of importance cause the CFP objectives to fail.

2.6. The culture of noncompliance by the EU Member States

The 2007 Court of Auditors Report revealed several shortcomings in the EU fishery control and enforcement system. The main problem is the low compliance with EU fishery law,⁷⁴ identified in a 2009 green paper as a lack of compliance by both MS and the fishing industry, which reveals one of the system's structural failings.⁷⁵ The EU admits that legal compliance needs to improve, also from an economic perspective. A calculation on economic gains by dodging regulations relates to the severity of sanctions in cases of detection.⁷⁶ Sanctions therefore need to countervail the economic gain of trespassing. Detecting noncompliance with fishery rules, the previous reactions strengthened enforcement and control measures, as illustrated by the new control regulation. Because the incentives to cheat on the CFP remain the same, the conflict between short-term and long-term interests is unchanged. Thus, the CFP is in need of structural change, both instrumental and normative. Stakeholders will seek to maximize their gain, often regardless of social and legal rules, the behavior and opinions of peers, as well as personal moral values.⁷⁷

EU law prohibits the EU from enforcing the *acquis* against fishery industry addressees, but it is responsible for ensuring MS compliance. The commission's proposed "compliance work plan" to "achieve a more effective, uniform and equitable application of the rules of the CFP by all the Member States"⁷⁸ failed due to weak implementation, which led to a lack of uniformity and "the absence of a level playing field of control and enforcement at EU level."⁷⁹ This concept of equal treatment is vital, as discrimination based on nationality is prohibited according to EU fisheries law. The lack of a level playing field encourages unfair competition and illegal fishing.

Transparency promotes liability, a joint belief in fair competition and the absence of transgression. The compliance work plan drew up a "scoreboard" that aimed to improve the transparency of the CFP compliance.⁸⁰ Now discontinued, the compliance scoreboard contained information on MS' CFP implementation, i.e. the conservation of fishery resources, fleet management, structural policy, and control and enforcement.⁸¹

The EU may opt for varied reactions against MS breaching CFP legislation: Under Article 18.8 and 19.4, the commission may request "that the MS concerned amends or repeals the measure."

2.7. Conclusion: a "weakness of will"

As shown in this section, while the EU fisheries commission has promoted drastic changes to the regulatory system, the dominant fisheries interests, lobbying the EU Parliament,⁸² have been much harder to get onboard. The strong interests promoting the *status quo* seem impervious to the lofty ideas served by policy "avant-gardists." Thus, future solutions that ignore the strength of these interest groups will fail. This fact has already resulted in corrupt political implementation and a failure to meet the textually based correct interpretation. The EU has refrained from taking measures to prevent the tendencies of the fishing industry to sabotage costly hindrances, which, in turn, has resulted in maintaining the five structural failings. Due to the lack of stakeholder decision-making competency, radical changes should not be expected in the CFP anytime soon.

The major problem is, perhaps, a weakness of will to ensure correct implementation⁸³ and not CFP provisions as such. Thus, the problem is not a lack of reform, but the lack of implementation of, compliance with, and enforcement of existing regulations.

However, this argument is in some respects unconvincing, because in most instances—including the 2013 regulation—the provisions are hindrances and, if not lifted, even the strongest noncompliance with the legislature cannot prevail. One clarification is illustrative. A conversion from top-down micromanagement to bottom-up stakeholder responsibility would entail radical change, including amending the EU Constitution, specifically TFEU Article 3(1). No MS that is practicing noncompliance can convert the top-down decision-making system into a bottom-up system without a radical change in regime, which would require a unanimous decision by all 28 MS.

In another case, noncompliance might relate to catch limits on landings. If amended this rule would apply to catch limitations measured by the catches, not by landings. Thus, the discharge rule would be transformed from a permission to a prohibition rule. Here noncompliance may flourish due to lax enforcement and impossible supervision.

3. EU 2013 remedies to deal with CFP imperfections

This section investigates whether the M-reg has solved or at least mitigated some of the CFP's imperfections. The discussion also compares the final and draft regulations with the commission's green paper.

3.1. An overview

As explained in Section 3.2, the sustainable exploitation of fish stocks refers to the exploitation at an MSY. The objective of sustainable development set out in the United Nations Convention on the Law of the Seas and in the 2002 World Summit on Sustainable Development adopted sustainability as a target to be obtained by 2015.⁸⁴ The M-reg objective of reaching MSY is clearly enshrined,⁸⁵ because the objective of sustainable exploitation becomes a legal obligation by 2015,⁸⁶ according to the EU obligation signed in Johannesburg (2002). The explanatory memorandum accompanying the proposal states that this target was established because the impact assessment carried out on the reform of the CFP demonstrated that by 2015 an MSY would achieve "significant economic and social improvements."⁸⁷ An impact assessment carried out before the reform revealed that repaired fish stocks would generate an extra €2.7 billion for the EU fishing industry,⁸⁸ resulting in a better economic performance and social sustainability. However the 2013 regulation modified the draft law, claiming that the "maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks."⁸⁹

This section gives an account of the new management regulation that entered into force on 1 January 2014, delayed by one year due to the EU Parliament's obstructions.

This section examines the setting of the reform and the proposed changes in management instruments, followed by a discussion on the integration of eco-friendly policy.

3.2. The still-immature "radical change" of the CFP: political goals in general

A continuous difficulty is the task of developing and making operational the EU's expressed political goals. The desired outcome of this legal study is to identify and evaluate the existing results-based management systems, with a special emphasis on the rigidity of the legal frames of the CFP.

The problems of fisheries management are serious in many parts of the world, but those found in EU fisheries stand out, since they persist despite systematic and long-term efforts to deal with them. The EU identifies the issues as follows⁹⁰:

- How do we define the objectives regarding ecological, economic, and social sustainability⁹¹ in a clear, prioritized manner that gives guidance in the short term and ensures the long-term viability of fisheries?
- Should the future CFP aim to sustain jobs in the fishing industry or should it aim to create alternative jobs in coastal communities through EU policies?
- How do we define indicators and targets to implement proper guidance for decision-making and accountability?⁹² How do we identify time frames for reaching these targets?

The road ahead prior to the 2013 M-reg included the introduction of a market-based, transferable fishing concessions (TFC) or quota (ITQ) regime; catch quotas instead of landing quotas; and an obligation for fishermen to accept camera surveillance of catches at sea. Hence, the new system ripped up the nation-based, nonharmonized fisheries system to promote a community-based TFC (ITQ) and catch quota management system. According to the 2013 regulation, the goal of sustainability is the basis of this system.⁹³ This has been a long-term objective: “There is ... no conflict between ecological, economic and social objectives in the long term ... Ecological sustainability is therefore a basic premise for the economic and social future of European fisheries.”⁹⁴ Thus, in terms of the language, the basic objectives have not changed much. However, the balance of interests seems—in the commission—to give priority to the sustainability of fish stocks.

I am committed to setting quotas in accordance with Maximum Sustainable Yield (fMSY) but, in line with the agreement I brokered on the new CFP, we must phase it in where its immediate application would seriously jeopardize the social and economic fabric of the fishing fleets impacted. The Commission proposals assume its immediate application irrespective of the socio economic implications. This is not acceptable.⁹⁵

Objectives should become operative specifically by establishing “indicators and yardsticks that could provide more concrete guidance or to help measure policy achievements.”⁹⁶ *Concrete* is defined as follows:

- The fishing industry is essential to supplying food to European citizens and supporting livelihoods in European coastal areas.⁹⁷ Ensuring its future is, and must remain, an important policy objective for the European Union: “The CFP shall, in particular: provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity.”⁹⁸
- Bringing and keeping the capacity of the fishing fleets in line with fishing opportunities will inevitably lead to less overall employment in the catching sector. There is a legitimate social objective in trying to protect the most fragile coastal communities from this trend. The EU must address the social concerns in a way that does not prevent larger fleets from undergoing the necessary

adaptations: “provide for measures to adjust the fishing capacity of the fleets to levels of fishing opportunities . . . with a view to having economically viable fleets without overexploiting marine biological resources.”⁹⁹

- One way is differentiated management regimes: one for large-scale fleets, targeting capacity adjustment and economic efficiency, and another for small-scale fleets, focusing on social objectives. This division is still within the jurisdiction of the CFP: “Existing rules restricting access to resources within the 12 nautical mile zones of MS have operated satisfactorily . . . Those rules have also preserved the traditional fishing activities on which the social and economic development of certain coastal communities is highly dependent. Those rules should therefore continue to apply. MS should endeavour to give preferential access for small-scale, artisanal or coastal fishermen.”¹⁰⁰
- While the original objective was to split the large-scale segment from the small-scale one, providing the first fleet with market-based allocation mechanisms and the latter with direct allocation of quotas, the 2013 regulation rejected this distinction.¹⁰¹ Now it is up to each MS to make the appropriate choices, save that the “measures to adapt the fishing capacity of fishing vessels [relate] to available fishing opportunities.”¹⁰²
- All MS at the 2002 World Summit on Sustainable Development accepted the 2015 deadline for the introduction of the MSY objective.¹⁰³ Now the goal is more modest: The EU should establish multiannual plans “based on scientific, technical and economic advice, and shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield in accordance with Article 2(2).”¹⁰⁴ Moreover, the time frame is now “within a reasonable time-frame” defined as “no later than 2020.”¹⁰⁵

The difficulty of making a *coherent means-end model* spills over to the complicated EU organizational model. The organizational systems that dictate the decision-making processes produce considerable pain: with 28 MS with diverse and complicated legislative procedures, the need for reform seems ripe. In this paper the focus is limited to the fisheries *acquis* only. I address procedures to prescribe new fisheries legislation in a subsidiary section, that is, I do not address amendments to EU treaties.

The EU directs a varied system of decision-making processes. The EU commission mainly handles the administrative provisions of these processes, which are steadily increasing. The commission’s draft law results from a joint expert-bureaucrat proposal, some of which are protected from political horse-trading. While criticism has been raised about a democratic deficit in the decision-making processes, this is not a matter of concern here.

The complexity is comprehensive not only in areas of split competency between the EU and its MS (TFEU Article 4), but also in areas where the EU has sole competency (TFEU Article 3).

The organizational system that entitles the EU Council and EU Parliament “co-legislature” is found in the Treaty on European Union (TEU) Articles 14 and 16 and the TFEU. Some would say that these processes are too complicated and

incoherent to be efficient. Fisheries face exceptions related to “measures on fixing prices, levies, aid and quantitative limitations on the fixing and allocation of fishing opportunities” (TFEU Article 43, 3).

The increased complexity results in prolonged proceedings, the time of which has increased extensively if we compare the two periods 1999–2004 and 2004–2009, with an average duration of 15.2 months for the first reading, 31.3 months for the second reading, and 43.7 months for the conciliation.¹⁰⁶ This time frame contributes to the inability to make radical amendments. Things remain the way they are, simply because of the enormous transitional costs and burdens.

3.3. Main changes I: ban on discarding

The commission’s 2009 green paper states, “[T]he future CFP should ensure that discarding no longer takes place.”¹⁰⁷ The draft CFP legislation codifies the obligation to land all catches (Article 15), which is formulated as follows: fish shall “be brought and retained on board the fishing vessels and recorded and landed, except when used as live bait . . .” The obligation applies to species mentioned in draft law Article 15 (1) only. It does not apply to the discarding of the by-catches of noncommercial fisheries. These changes are supposed to take place within specific time frames, which apply to different species.¹⁰⁸ The obligation to land all catches is not supposed to lead to economic gain for the fisherman and an incentive to avoid unwanted catches follows from Paragraph 2. The sale of illegal catches, that is, under minimum size, shall be restricted to fish meal or pet food purposes.¹⁰⁹ MS should ensure that vessels flying its flag are equipped with apt monitoring systems to guarantee landing compliance.

The final M-reg, however, loosens this grip. Now the objective is “to gradually eliminate discards.”¹¹⁰ The “landing obligation should be introduced on a fishery-by-fishery basis. Fishermen should be allowed to continue discarding species which, according to the best available scientific advice, have a high survival rate when released into the sea.”¹¹¹ Despite the obligation to establish “multiannual plans or the specific discard plans” (Article 18), the main impression is that the M-reg has softened the green paper’s expressions that are more absolute.

3.4. Main changes II: technical measures

The M-reg also covers principles for technical conservation measures.¹¹² These belong to the EU’s exclusive competence. Establishing regional competence invites an EU–MS shared competence. This would require changes in the basic laws enshrined in the TEU and TFEU, in particular the subsidiarity principle.

The commission—in its draft law—recommends calling off the present micro-management system to the benefit of decentralization and MS legislation. The Article 8 of the draft law contains a list of possible technical measures. In comparison to Article 4.4 of the now-void Regulation 2371/2002, Article 8 prescribes a more detailed account of the types of measures allowed. Hence, MS may apply—within a defined toolbox –technical rules necessary to achieve the policy’s conservation objectives. Here the MS should inform parties on measures undertaken, and the

commission may carry out an assessment of its effectiveness and compatibility. As a safety guard, the commission may reject an MS decision in order to meet the Technical Measure framework.¹¹³

However, the detailed list proposed was never implemented, as the 2013 M-reg limited itself to defining the appropriate direction. The M-reg emphasizes the importance of technical measures in reaching the objectives of the conservation policy: “to minimise the negative impact of fishing activities on marine biodiversity and marine ecosystems, including measures to avoid and reduce, as far as possible, unwanted catches.”¹¹⁴ It prescribes an end-result solution that refrains from interfering with the instruments used, if these are within the framework of the treaties.

3.5. Main changes III: effort limitation

The draft M-reg directs overcapacity by requiring MS to adjust national fishing fleets to its fishing opportunities. The commission considered it necessary to maintain a fleet policy that prescribes a ceiling for each MS.¹¹⁵

However, these proposals never materialized. According to the M-reg, MS—and not the EU—shall determine the ceiling for both the number of fishing vessels and the compulsory maximum fleet capacity (preamble, Paragraphs 43 and 44).

The establishment of entry–exit schemes (Article 23) prescribes that the total tonnage should remain at the same level throughout this intermediate period (until 31 December 2022; see Article 49). Simultaneously, the fleet capacity should match prospective fishing opportunities. Whether MS have sufficiently honored EU provisions will be evaluated at the end of 2018 (Article 23.3).

3.6. The most radical change: TFC

The draft law introduced a mandatory system of TFC to regulate access to resources. The EU prolonged the TAC system and the division of MS quotas based on relative stability. According to the initial schedule, the TFC should be implemented no later than 31 December 2012 and apply to all vessels 12 meters or more in length, and all trawlers. The proposed system should apply to all licensed fishing.¹¹⁶ The aim of this new system is to eliminate overcapacity and to improve the economic result of the fishing industry as a whole.¹¹⁷

The draft law promotes TFC and introduces a specific safeguard for these vessels. While the draft law allows MS to exclude small-scale fleets from the TFC system,¹¹⁸ the final legislation left the MS to decide which system to apply,¹¹⁹ at which point they were required to inform the commission of their decision.¹²⁰ As this fact reveals, the commission and its external scientific advisors opted for an ITQ system. Political pressure would have had it otherwise.

During the debate, several MS disagreed that the TFC is an appropriate system for the future structure of the CFP or for fishing societies. Of the MS, the French and German fisheries ministers stated that marine resources are a common good and that they are opposed to any privatization of the resources. They also claim that the proposed safeguards are not adequate to ensure the livelihood of coastal communities.

The Scandinavian MS are more in favor of the system.¹²¹ The purpose of this section is to present some of the main pros and cons.

One main argument for TFC—which each MS should reflect—is the contribution to a better economic performance for the EU’s fishing industry. In Maria Damanaki’s presentation on the reform of the CFP, she stated that within the European fishing industry 35% of businesses are operating at a loss and that 11% of the segments have a negative cash flow, resulting in a negative impact on coastal regions and fishing communities.¹²² The commission envisions that TFC might accelerate fleet capacity reductions, thus justifying the exemption of vessels operating under the TFC system from the fishing capacity ceiling imposed by the commission (draft law, Article 35.2).

The council’s draft law states that the new fishing concessions system would supposedly lead to better economic performance if it were both transferable and leasable. In practice, if passed, it would mean that a fisherman may acquire a quota that suits his fishing patterns either by leasing or procuring the quota needed, that is from their producer organizations.¹²³ This system would decentralize the management of fishing opportunities towards the fishing industry.

The flexibility of TFC is supposed to create an incentive for operators to increase their fishing concessions, while others may decide to leave the industry.¹²⁴ Because of this, the EU has predicted that an improved system would raise income figures by 20% and crew wages by 50–100%, by the year 2022.¹²⁵ The system of TFC, if introduced, is further expected to contribute to the objectives of environmental, social, and economic sustainability within the EU.

The pre-decision debate uncovered considerable disagreement. As reported by ClientEarth, the system of ITQ is supposedly unlawful, according to TFEU Article 345 as well as the principles of subsidiarity and proportionality.¹²⁶ The position was that the EU lacked competency to interfere with MS property rights, touching upon the sensitive subject of state sovereignty. In addition, the aim of the principle of subsidiarity is that the EU may only legislate when it is entitled to do so. Without going into further detail here, this position is no longer relevant, because the European Court of Justice interpretation states that TFEU Article 345 is *lex inferior* to “the four freedoms” of the EU market.¹²⁷

Among EU vessels, 77% belong to small-scale fleets.¹²⁸ Small-scale fleets play an important role within the EU fishing industry and are equally important for the EU’s fishing communities and the cultural identity of many coastal regions. ITQ distribution of fishing rights might ruin rural societies and fishing villages.

MS legislative competence on small-scale fisheries participation may safeguard the livelihood of fishing communities. MS were supposed to limit transferability to ensure a close link between coastal communities and the fishing concessions and perhaps to prevent the excessive concentration of concessions. Furthermore, MS—as stipulated by the draft law—could impose fees for the use of individual fishing opportunities to finance management costs.¹²⁹

While these positions and arguments are still valid on the MS level, the EU is—at least for now—prohibited from introducing TFCs. Due to objections from the EU

Parliament, the draft codification failed and the proposal's most fundamental change (the establishment of EU mandatory TFCs, which would have required an EU-harmonized, closed entry system) went "down the drain." The ultimate solution was that MS might unilaterally decide to conform to the TFC of their own free will (preamble, Paragraph 42).

4. Future management regulations: looking into the crystal ball

The problems engulfing EU fisheries management is complex. The purpose of this comparative analysis of present and past management regulations, draft provisions, and green papers is to reveal whether the present 2013 M-reg form the necessary basis for the radical change needed to bring a dysfunctional CFP on track. Is there any light at the end of the tunnel?

The main conclusion is that the 2013 M-reg has failed to introduce fundamental new solutions. Thus, if improvement in fisheries stocks is to occur one cannot rely on new regulations by EU politicians to provide positive results.

Seen in retrospect, the "clairvoyance" of the mid-1970s seems almost prophetic: Yes indeed, the EU *has been* plagued with CFP problems "for some time to come."¹³⁰ A permanent solution for the CFP is still not in place. Well into the fourth decade since the first intermediate solutions of the 1970s, we have still not reached a basic and final fisheries management structure. The 2013 M-reg extends the main elements of the 2002 regulation, which again is mainly a copy of the 1980s provisions. As stated, the main goal is to "contribute to the Europe 2020 Strategy for smart, sustainable and inclusive growth, and should help to achieve the objectives set out therein" (M-reg preamble, Paragraph 4)—that is "a multiannual approach" (preamble, Paragraph 23), MSY (preamble, Paragraph 32), a multi-stock management plan (preamble, Paragraph 24), a gradual elimination of discards (preamble, Paragraph 26), and sustainable partnership agreements with third countries (preamble, Paragraph 51).

On the one hand, there does seem to be some improvement in fishing stocks. However, one cannot attribute these changes to changes in politics or law. Since the amendments to repair failings according to the crisis-description of 2009 took place late 2013, time is too short to conclude whether these most recent amendments will improve the stock situation.

How to transform ideas for viable fisheries management into reality is still a puzzle. In principle there are three options: a top-down approach, a bottom-up solution, or a system of market distribution. As envisaged, no radical changes have taken place. Hence, the micromanagement system is still in force.

NOTES

1. Commission of the European Communities, *Green Paper: Reform of the Common Fisheries Policy* (Brussels: EU Commission, 2009), p. 9. COM(2009) 163 final.
2. This article is an edited and updated excerpt of one of the EU fisheries law analysis of the EU project EcoFishMan, "Ecosystem-based Responsive Fisheries Management in Europe." The Seventh Framework Programme, see <http://www.ecofishman.com/> (accessed September 3, 2014).

3. Supra n. 1.
4. European Commission, *Commission Staff Working Document. Synthesis of the Consultation on the Reform of the Common Fisheries Policy* (SEC(2010) 428 final Brussels: European Commission, 2010), pp. 4–7.
5. “Getting it right.” The birth of a new Common Fishery Policy. A statement by Maria Damanaki, *The European Maritime Affairs and Fisheries Commissioner on the Reform of a New Common Fishery Policy to the European Parliament Committee for Fisheries* (Brussels: European Commission, 2011).
6. EU Parliament and Council Regulation (EU) No 1380/2013 Regulation (EU) of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC.
7. Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy.
8. Referred to here as M-reg. References to Articles/Preamble in the continuation relate to M-reg. if not specified otherwise.
9. Commission of European Communities, *Green Paper on the Future of the Common Fisheries Policy* (Brussels, March 20, 2001, COM (2001) 135 final.
10. Supra n. 1.
11. See R. H. Coase, “The Problem of Social Cost,” *Journal of Law & Economics* 3 (1960): 1–44.
12. Jon Elster, *The Cement of Society: A Study of Social Order* (Cambridge: EU Rapid Press Realease, 1989).
13. Angelika Volle and William Wallace, “How Common a Fisheries Policy?,” *World Today* 33, no. 2(1977): pp. 62–72.
14. Michael Sissenwine and David Symes, *Reflections on the Common Fisheries Policy. Report for the General Directorate for Fisheries and Maritime Affairs of the European Commission* (2007). COM (2009) 163 Final. See also COMMISSION STAFF WORKING PAPER, IMPACT ASSESSMENT, *Accompanying the document*, Commission proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy [repealing Regulation (EC) N° 2371/2002]. <http://www.cfp-reformwatch.eu/wp-content/uploads/2011/07/sissenwine-symes-reflections-on-the-common-fish.pdf> (accessed May 16, 2015).
15. Supra n. 1.
16. L.c.
17. Damanaki calls for support for fisheries reform plans; The Commission presents its proposals for restraint that may save the fishing industry – and fish – from destruction, EUROPEAN Voice, jULY 13TH 2011, <http://www.europeanvoice.com/article/imported/damanaki-calls-for-support-for-fisheries-reform-plans/71623.aspx> (accessed October 11, 2011).
18. Supra n. 1.
19. Massimiliano Cardinale et al., “Rebuilding EU Fish Stocks and Fisheries, a Process Under Way?,” *Marine Policy* 39 (2013): pp. 43–52.
20. MareFrame—FP7 Project Summary Co-creating Ecosystem-based Fisheries Management Solutions (2014–2018), <http://www.mareframe-fp7.org> (accessed September 3, 2014).
21. Setareh Khalilian et al., “Designed for Failure: A critique of the Common Fisheries Policy of the European Union,” *Marine Policy* 34 (2010): pp. 1178–1182.
22. For a discussion, see Jill Wakefield, “Fisheries: A Failure of Values,” *Common Market Law Review* 46 (2009): pp. 431–70, see esp. pp. 443–5.
23. For a discussion on the CFP of the 1970s: See supra n. 13, pp. 62–72.
24. Supra n. 1, p. 9.

25. L.c.
26. L.c.
27. L.c.
28. Supra n. 22.
29. Supra n. 20, pp. 43–52, see esp. p. 52.
30. EU Commission, *Fish Stocks in Northeast Atlantic Recover, Whilst Serious Overfishing in Mediterranean: Commission Sets Out Plans for 2015 Fishing Opportunities* (Brussels, 2014), http://europa.eu/rapid/press-release_IP-14-724_en.htm (accessed September 2, 2015).
31. See i.e. Council Regulation (EU) No 1243/2012 of December 19, 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks.
32. ICES WGDEEP REPORT 2014, ICES ADVISORY COMMITTEE ICES CM 2014/ACOM. 17 *Report of the Working Group on Biology and Assessment of Deep-sea Fisheries Resources* (Copenhagen, Denmark: ICES, 2014), 52.
33. Op. cit., p. 47.
34. Supra n. 1.
35. Jeremy Phillipson and David Symes, “Finding a Middle Way to Develop Europe’s Fisheries Dependent Areas: The Role of Fisheries Local Action Groups,” *Sociologia Ruralis* 55 (Helsinki, Finland: European Society for Rural Sociology 2015): pp. 343–9, see esp. p. 345.
36. COUNCIL REGULATION (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund. See also, REGULATION (EU) No 387/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 April 2012 amending Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability. The regulation is still valid due to the REGULATION (EU) No 335/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of March 11, 2014 amending Council Regulation (EC) No 1198/2006 on the European Fisheries Fund; cf. the preamble, Paragraph 4. “However, since certain Member States still face serious difficulties with respect to their financial stability, the application of the increased co-financing rate should not be limited to the end of 2013.”
37. European Commission. *Directorate-General for Fisheries and Maritime Affairs Structural Policy, Sustainable Development of Fisheries Areas: Guide for the Application of Axis 4 of the EFF* (Brussels: EU Commission, 2006), p. 2.
38. “I spoke to some of the crew on board the Danish purse seiner “Gitte Henning,” the Danish ship with the largest quotas, when they were discharging herring in Møre (Norway). The crew of 6 men working a 1-1 rotation and the ship had bought ITQs for more than 1 billion (!) Danish Kroner; despite this fact the crew members do not earn more money than we do (onboard a small Norwegian coastal vessel.” Email from Norwegian fisherman Daniel Fedøy November 21, 2011 to the author).
39. Eva Tallaksen, undercurrentnews, February 14, 2013, Report: Intermarche fleet is ‘loss-making, destructive, propped up by subsidies, <http://www.undercurrentnews.com/2013/02/14/report-intermarche-fleet-is-loss-making-destructive-propped-up-by-subsidies/#.URymuaVWx8E> (accessed March 27, 2014).
40. Tom Seaman, undercurrentnews, May 31, 2013 “Galician government to loan Pescanova money” <http://www.undercurrentnews.com/2013/05/31/galician-government-to-loan-pescanova-money/#.Ua4vf5zx8ng> (accessed March 27, 2014).
41. Undercurrentnews, June 3, 2013, Pescanova hid debt across ‘opaque’ network of firms, <http://www.undercurrentnews.com/2013/06/03/pescanova-hid-debt-across-opaque-network-of-firms/#.Ua40KJzx8ng> (accessed March 27, 2014).
42. Supra n. 22.

43. See Ewa Kurlanda, "Exploitation of Sea Resources and the Territorial Application of the Law of the Sea," *Journal of Politics and Law* 4 (2011): pp. 51–62, see esp., pp. 54–56.
44. Supra n. 22.
45. Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (OJ L 289, 7.11.2003, p. 1).
46. Supra n. 35.
47. Maria Damanaki, "A Fisheries Policy for the Future," *Environmental Policy and Law* 41, no. 4–5 (2011): p. 230.
48. See Robin Churchill and Daniel Owen, eds., *The EC Common Fisheries Policy* (Oxford, New York: Oxford University Press, 2010), see esp. Part I.
49. Supra n. 21.
50. Apostolos Karagiannakos, "Total Allowable Catch (TAC) and Quota Management System in the European Union," *Marine Policy* 20 (1996): 235, at 244.
51. Also named "Cash for Access" - agreements, see i.e. Béatrice Gorez, ed., *The Future of ACP-EU Fisheries Relations, Towards More Sustainability and Improved Social and Economic Wellbeing for ACP Coastal Communities* (Wageningen, The Netherlands: Technical Centre for Agricultural and Rural Cooperation (CTA), 2006), pp. 4–8.
52. See i.e. Anon, *Fisheries Partnership Agreements: European Vessels Versus African Fisherman* (Amsterdam, The Netherlands: Fair Politics/Evert Vermeer Foundation, 2010).
53. See as an illustration: Proposal for a COUNCIL DECISION on conclusion of the Protocol between the European Union and the Islamic Republic of Mauritania setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two Parties currently in force. COM(2012) 546 final 2012/0258 (NLE) (Brussels, September 24, 2012). The "first generation" bilateral fisheries agreements will gradually evolve into FPAs. In 2005, however, only 2 of 18 bilateral fisheries agreements with African, Caribbean and Pacific coastal states (with the Comoros and Seychelles) had been negotiated by the FPA approach, see supra n. 15.
54. See i.e. the European Parliament legislative resolution of 8 October 2013 on a draft council decision on the conclusion of the Protocol setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania for a period of two years (15777/2012 – C7- 0419/2012 – 2012/0258(NLE)).
55. See Béatrice Gorez, West Africa. Fisheries Agreements, "The Thievery of Fish. Two Veterans from West Africa Discuss How Fisheries Agreements with the European Union Ought to Evolve, in the Light of the Ongoing Review of the Common Fisheries Policy," *Agritrade* (June 2009): pp. 33–7.
56. Gorez, supra n. 15, p. 72.
57. Peter Örebech, *The New "Stakeholder Regime" Under the EU Fisheries law (2013), Still a Way to Go*, (draft txt).
58. Churchill and Owen. Supra n. 48, p. 132.
59. Op. cit., p. 133.
60. Article. 8 (1).
61. Article. 15 (3) Supra n. 6 cf. article 46.
62. The preamble, Paragraph 41, and Article 20.
63. Article. 4 (15).
64. Churchill and Owen. Supra n. 48, p. 134.
65. Article 15(1).
66. Churchill and Owen. Supra n. 48, p. 134.

67. TACs and quotas. Fact sheet. The European Union.
68. Article 6, cf. Article 2.
69. Markus Till, *European Fisheries Law: From Promotion to Managements* (Groningen: Europa Law, 2009), p. 68.
70. See also Council Decision 2004/585/EC of July 19, 2004 establishing Regional Advisory Councils under the Common Fisheries Policy, OJ L 256, August 3, 2004, p. 17.
71. Communication from the Commission to the Council and the European Parliament. Review of the Functioning of the Regional Advisory Councils, p. 9.
72. Bundeamt für Naturschutz, *Towards Ecologically Sound Fisheries Management in European Waters Comments by the Federal Agency for Nature Conservation (BfN) on the Green Paper "Reform of the Common Fisheries Policy"* (COM(2009) 163 final) (Berlin: Bundesamt für Naturschutz, 2009), p. 3.
73. Op. cit., p. 19.
74. Court of Auditors. Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community Fisheries resources together with the Commission's replies (2007/C 317/01) 21.
75. Supra n. 1.
76. Jesper Raakjær Nielsen, An analytical framework for studying: compliance and legitimacy in fisheries management. *Marine Policy*, 2003, Vol. 27(5), pp. 425–432. (accessed October 11, 2011).
77. L.c.
78. Communication from the Commission—compliance with the rules of the Commons Fishery Policy—"Compliance workplan and scoreboard" (2003) Section 1.1.
79. Op. cit.
80. Op. cit.
81. Fisheries-info@ec.europa.eu. Email from the Directorate General for Maritime Affairs and Fisheries, October 4, 2011.
82. As illustrated by, "Rotten menu: EU fisheries ministers approve deep sea devastation," Press release—(Green Peace November 22, 2006), <http://www.greenpeace.org/eu-unit/en/News/2009-and-earlier/rotten-menu-eu-fisheries-mini/> (accessed August 2, 2015).
83. I am indebted to an anonymous peer reviewer for this perspective.
84. The preamble, Paragraph 7. Council Regulation (EC) No 1380/2013 of 11 December 2013.
85. The preamble, Paragraph 6.
86. Article 2(2).
87. Com(2011) 425 final. Proposal for a regulation of the European Parliament and the Council on the Common Fisheries Policy, July 13, 2011.
88. "Getting it right." Supra n. 5.
89. Article 2(2). Council Regulation (EC) No 1380/2013 of 11 December 2013.
90. L.c., p. 10.
91. The preamble, Paragraph 4.
92. Articles 7.1(b), 9.2 & 4, 10.1(c), (d), (f) & (g), 10.2(b), 16.4, 18.5(c), 18.6 and 22.4.
93. The preamble, Paragraph 4.
94. Green Paper, p. 9.
95. Simon Coveney, *The Ireland Minister for Agriculture, Food and the Marine*, in a Press Release (DAFMPR 196/2014 of 14 December 2014), <http://www.agriculture.gov.ie/media/migration/press/pressreleases/2014/december/PR1962014.pdf> (accessed October 21, 2015).
96. Green Paper, p. 9.
97. Which again produces an imperative for EU to negotiate access to foreign waters, i.e. the "cash for access" agreements and the present Fisheries Partnership Agreement (FPA)—see Evaluation of the fisheries agreements concluded by the European Community, Évaluation

- des accords de pêche conclus par la Communauté européenne. Rapport Final. IFREMER/CEMARE/CEP Ref. APC02 (1999).
98. Article 2.5(c).
 99. Article 2.5(d). Op. cit.
 100. The preamble, Paragraph 19, op. cit.
 101. Green Paper, p. 9.
 102. Article 7.1(c).
 103. Green Paper, p. 9.
 104. Article 9.1
 105. The preamble, Paragraph 7.
 106. European Parliament (2009), “EP Activity Report of the delegations to the Conciliation Committee,” (presented by the three Vice-Presidents responsible for Conciliation: Mrs Kratsa-Tsagaropoulou, Mrs Roth-Behrendt and Mr Vidal-Quadras 1 May 2004–13 July 2009) (Strasbourg, 6th Parliamentary term).
 107. Supra n. 1.
 108. Article 15.1 (a)(b)(c). Com(2011) 425 final. Proposal for a regulation of the European Parliament and the Council on the Common Fisheries Policy, July 13, 2011.
 109. Article 15 (2) Op. cit.
 110. The preamble, Paragraph 26. See also Article 5(a).
 111. The preamble, Paragraph 27.
 112. Article 7.2.
 113. Supra n. 107, Articles 21–24.
 114. Article 7.2(e).
 115. Supra n. 107, Articles 34 and 35.
 116. Article 27.1(a)(b) Supra n. 107.
 117. L.c.
 118. Supra n. 107, Article 27(2). L.c.
 119. Preamble, Paragraph 42.
 120. Articles 16.6 and 21.
 121. CFP reform, <http://www.europolitics.info> (assessed August 3, 2011).
 122. Maria Damanaski. Supra n. 5.
 123. Maria Damanaski. Op. cit.
 124. Questions and answers on the reform of the Common Fishery Policy. Europa press releases RAPID. www.eur
 125. Europa press releases RAPID. Questions and Answers on the Common Fishery Policy, <http://www.Europa.eu> (assessed August 2, 2011).
 126. The principles were explained in Section 2.3.
 127. As made clear by EU case law, see for example case C-463/00 *Commission v Spain* ECR [2003] I-4581 and case C-98/01 *Commission v UK and North Ireland* ECR [2003] I-4541. For further discussion, see supra n. 57.
 128. Supra n. 146. In terms of vessel tonnage or size the small-scale fleets account for 8% and in terms of vessel power small-scale fleets account for 32%.
 129. Article 29.6.
 130. Supra n. 13, pp. 62–72, at p. 72.